

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Adrian Legaspi	Team: Team # 4	CCRB Case #: 201401090	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/28/2014 4:20 PM	Location of Incident: Front of 5302 6th Avenue	Precinct: 72	18 Mo. SOL 7/28/2015	EO SOL 7/28/2015	
Date/Time CV Reported Tue, 02/04/2014 11:59 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 02/04/2014 11:59 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Anastasakos	18889	942950	072 PCT
2. POM Salvatore Lopiccolo	15555	930593	072 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Quran Mcphatter	08855	937079	072 PCT
2. POM Brian Contratto	07599	944456	072 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Salvatore Lopiccolo	Abuse: PO Salvatore Lopiccolo stopped § 87(2)(b)	
B.POM John Anastasakos	Abuse: PO John Anastasakos stopped § 87(2)(b)	
C.POM Salvatore Lopiccolo	Discourtesy: PO Salvatore Lopiccolo spoke discourteously to § 87(2)(b)	
D.POM Salvatore Lopiccolo	Discourtesy: PO Salvatore Lopiccolo acted discourteously toward § 87(2)(b)	
E.POM Salvatore Lopiccolo	Force: PO Salvatore Lopiccolo used physical force against § 87(2)(b)	

### Case Summary

On January 28, 2014, at approximately 4:20 p.m. § 87(2)(b) exited 5302 6<sup>th</sup> Avenue, in Brooklyn after purchasing two “dime bags” of marijuana. While exiting the building, § 87(2)(b) encountered two plainclothes officers, PO Salvatore Lopicollo and PO John Anastasakos of the 72<sup>nd</sup> Precinct, who then followed § 87(2)(b) out of the building and stopped him (**Allegations A and B**).

§ 87(2)(b) removed a PBA card from his wallet and handed it to PO Lopicollo, who took the PBA card, said, “I don’t give a fuck about your PBA card,” and threw the card to the ground (**Allegations C and D**). PO Lopicollo then punched § 87(2)(b) in his left temple (**Allegations E**). By this point, two uniformed officers, PO Brian Contratto and PO Quran McPhatter of the 72<sup>nd</sup> Precinct, had arrived on scene and they assisted in placing § 87(2)(b) under arrest. He was charged with § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### Mediation, Civil, and Criminal Histories

§ 87(2)(b) s case was not eligible for mediation. On § 87(2)(b), § 87(2)(b) filed a Notice of a Claim against the city in regards to this incident. § 87(2)(b) claimed trauma, shock, debasement, fright, loss of freedom, and the injustice of malicious prosecution (encl.105a-105b). A phone conversation with § 87(2)(b) s civil attorney, § 87(2)(b) § 87(2)(b) on January 23, 2015, indicated that a 50-H hearing has not been held yet. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

### Civilian and Officer CCRB Histories

PO Salvatore Lopicollo has been a member of the NYPD for 12 years. PO Lopicollo has a total of 22 allegations pled against him but with no substantiated allegations (encl.7-8). Other than this CCRB complaint, PO Lopicollo has had nine allegations of physical force (all of which were exonerated, unfounded, or closed because the complainant did not cooperate), one stop allegation (which was unsubstantiated), and two discourteous word allegations (one exonerated and one unsubstantiated).

PO John Anastasakos has been a member of the NYPD for 7 years. PO Anastasakos has a total of seven allegations pled against him but with no substantiated allegations (encl.9). PO Anastasakos has only one other allegation of a stop pled against him, which was unsubstantiated.

### Findings and Recommendations

**Allegation A- Abuse of Authority: PO Salvatore Lopicollo stopped § 87(2)(b)**

**Allegation B- Abuse of Authority: PO John Anastasakos stopped § 87(2)(b)**

§ 87(2)(b) stated that as he exited 5302 6<sup>th</sup> Avenue, which is part of the Federal Trespass Affidavit Program, PO Lopicollo asked him if he lived there. He replied that he did not and was visiting a friend, then continued to leave the building. PO Lopicollo and PO Anastasakos followed him outside and when PO Lopicollo asked him where he was going he replied, “Who the fuck are you?” § 87(2)(b) produced a PBA card, which PO Lopicollo dismissed, and PO Lopicollo began to use physical force against him.

Video footage of the incident (encl. 11-14, IA#25-27) shows the encounter from the point where the officers first see § 87(2)(b) in the vestibule immediately behind the front door (the officers are entering as § 87(2)(b) leaves), to his arrest and removal from the scene. The footage generally corroborates the sequence of events described by § 87(2)(b) although no audio was recorded.

PO Lopicollo stated that he arrived at 5302 6<sup>th</sup> Avenue in response to the radio run about possible drug use and sales in the stairwell. According to the Event Information for this report (encl. 72), a male caller named § 87(2)(b) called about the possible crime and provided a callback number different from that generated automatically. No description of the suspects was provided and the only information regarding the exact location of the crime was that it was in the stairwell.

PO Lopicollo stated that he first observed § 87(2)(b) whom he had never seen before, leaving the building quickly and decided to investigate him in part because of the FTAP building's history as the source of many complaints and trespass arrests. He initiated the encounter by taking out his shield and asking § 87(2)(b) where he was going and whether he lived there. § 87(2)(b) then said something to the effect of, "I don't have to fucking talk to you. Who the fuck are you guys?"

PO Lopicollo responded that they were police and § 87(2)(b) continued walking out of the building. Both officers followed him to the outside stoop, where PO Lopicollo explained the building's status as an FTAP location to § 87(2)(b) and asked if he was visiting anyone. § 87(2)(b) replied that he was visiting a friend, but could not provide a name or apartment number. According to PO Lopicollo, it was at this point, after a conversation about FTAP lasting approximately one minute, that he decided § 87(2)(b) was not free to leave. Shortly thereafter, he physically restrained § 87(2)(b) whom he claimed was trying to push past him.

PO Anastasakos stated that when he first saw § 87(2)(b) leaving the building, he told him, "Police, don't move" because he wanted to determine if § 87(2)(b) lived or had "legitimate business" in the building. When asked if there was anything specific to § 87(2)(b) that led him to suspect § 87(2)(b) of trespassing, PO Anastakos said, "No, we just went to ask him a question." (encl. 53) He characterized § 87(2)(b)'s behavior as disorderly and profanity-laced.

§ 87(2)(g)

§ 87(2)(b) He does not appear to be leaving the building at an unusually quick pace and does not make any attempt to flee or push past PO Lopicollo outside the building. Both officers' shields are inside their clothing until they follow § 87(2)(b) out the door and remove them. § 87(2)(b) immediately stops in the middle of the stairs in response. He appears calm and compliant as he produces a PBA card, which PO Lopicollo promptly throws away. By this point, 15 seconds after the officers first observed § 87(2)(b) PO Lopicollo and PO Anastasakos have surrounded § 87(2)(b) PO Contratto has approached the base of the stairs, and it is clear § 87(2)(b) was not free to leave. After throwing away the card, PO Lopicollo gestures toward the building's entrance, and when § 87(2)(b) does not immediately move in that direction, PO Lopicollo grabs the front of § 87(2)(b)'s sweater and attempts to pull him up the steps before using force against him. The investigation determined that § 87(2)(b) was stopped as he innocuously exited the building and that his actions at that point were not consistent with the officers' descriptions.

Police officers require a reasonable suspicion that someone is committing, has committed or is about to commit a crime before stopping that individual. People v. De Bour, 40 N.Y.2d 210 (1976) (encl. i-xi). Police officers may not demand identification from an individual solely because he is leaving a trespass affidavit building. People v. Ventura, 30 Misc. 3d 587 (Sup Ct, New York County 2010) (encl. 1-3). Officers may not stop an individual in an FTAP building who is engaged in innocuous behavior with no indication that he is trespassing or engaged in criminal activity. People v. Almonte, 30 Misc. 3d 1234A (Sup Ct, Bronx County 2011) (encl. 3a-3b).

§ 87(2)(g)

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] This is confirmed by the Criminal Court Report for § 87(2)(b)  
[REDACTED] s arrest (encl. 50), which does not mention the report of drugs. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation C- Discourtesy: PO Salvatore Lopicollo spoke discourteously to § 87(2)(b)**

**Allegation D- Discourtesy: PO Salvatore Lopicollo acted discourteously to § 87(2)(b)**

§ 87(2)(b) [REDACTED] alleged that after handing PO Lopicollo a PBA card, he said “I don’t give a fuck about your PBA card” and threw it down to the street. § 87(2)(b) [REDACTED] s statement (encl. 23-28) confirmed that PO Lopicollo threw a card that § 87(2)(b) [REDACTED] had handed him. At that point, § 87(2)(b) [REDACTED] s girlfriend, § 87(2)(b) [REDACTED] who had been waiting for him in front of the building, stated that she was not close enough to § 87(2)(b) [REDACTED] or PO Lopicollo to hear their conversation. At two minutes and 26 seconds into the video footage (encl.11-12, IA#25), PO Lopicollo can clearly be seen taking a card from § 87(2)(b) [REDACTED] and throwing it down to the ground. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

PO Lopicollo’s statement changed after viewing the video footage. In his initial statement (encl. 38-42), prior to viewing the video footage, he denied throwing § 87(2)(b) [REDACTED] s card. After viewing the video footage he changed his testimony to acknowledge that he did throw § 87(2)(b) [REDACTED] s card. PO Lopicollo maintained that he did not curse. PO Lopicollo argued that he threw § 87(2)(b) [REDACTED] s card away for “safety reasons,” however as seen in the video footage (encl.11-12 IA#25, and encl. 12, IA#26) there is no indication that § 87(2)(b) [REDACTED] or his PBA card posed any sort of threat. PO Anastasakos denied seeing any interaction involving a PBA card until he saw the video, after which he stated that he saw no reason for PO Lopicollo to do this. He denied hearing PO Lopicollo use profanity.

According to Patrol Guide Procedure 203-09 (encl. 4) officers must be “courteous and respectful” while dealing with members of the public.

§ 87(2)(g) [REDACTED]  
[REDACTED]

§ 87(2)(g)

**Allegation E- Force: PO Salvatore Lopicollo used physical force against § 87(2)(b)**

§ 87(2)(b) stated that PO Lopicollo punched him in his left temple after throwing away the PBA card. He denied making any attempt to strike the officers prior to being punched, but stated that after being struck and pushed against a wall, he moved his body away and stiffened his arms because he did not yet believe that they were police officers.

According to PO Lopicollo, after being given the PBA card, he attempted to restrain § 87(2)(b) who assumed a “fighting stance” while being combative and clenching his fists. In response PO Lopicollo hit § 87(2)(b). He stated that he used this force because he feared for his safety and that of his partner based on § 87(2)(b)’s stance and aggression and the fact that they were standing in close proximity with PO Lopicollo’s back against a railing over which he could have fallen. PO Anastasakos also described combative behavior on the part of § 87(2)(b) as the reason for the escalation in physical force.

As seen in the video footage (encl. 13, IA#26), soon after throwing away the PBA card, PO Lopicollo gestures toward the entrance of the building and attempts to bring § 87(2)(b) toward it by grabbing the front of his shirt and pulling. § 87(2)(b) reacts to being pulled by placing his right hand against PO Lopicollo’s left arm, after which PO Lopicollo pushes him twice against the building’s façade. § 87(2)(b) lifts his right hand up to grab his cap as it falls off his head, and moves his right hand downward toward PO Lopicollo’s arm. PO Lopicollo then strikes § 87(2)(b) in the left side of his face with what appears to be a closed fist (encl. 34a). A struggle ensues as all four officers on scene attempt to handcuff § 87(2)(b) who appears resist at least until the point at which he is placed front-first against a wall at the bottom of the steps and handcuffed. Approximately three minutes later, PO Lopicollo brings § 87(2)(b) to an RMP parked in the street.

When shown the video footage, PO Lopicollo was unable to point out any instance in which § 87(2)(b) can be seen in a fighting stance or clenching his fist. He stated that he attempted to pull § 87(2)(b) toward the building’s entrance because of the unsafe nature of where they were standing on the steps. He described the pushing as being perpetrated by both parties, and also pointed to the moment at which § 87(2)(b) raises his hand toward his cap as a “threat.”

According to Patrol Guide Procedure 203-11(encl.5-6), “only the minimum amount of force necessary to overcome resistance will be used to effect an arrest.”

§ 87(2)(g)

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Team: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date